

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEF MAHALEK,
BOGDAN SERBAN, and MICHEL WITTE

Appeal No. 1999-1661
Application No. 08/801,862

ON BRIEF

Before KRASS, JERRY SMITH, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-13. An amendment after final rejection filed July 27, 1998 was approved for entry by the Examiner. In response

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to the Appeal Brief filed by Appellants, the Examiner withdrew the rejection of claims 2-4 and 7-13 as indicated at page 2 of the Answer. Accordingly, only the rejection of claims 1, 5, and 6 is before us on appeal.

The disclosed invention relates to a motor vehicle sensing arrangement used to detect an obstruction at a movable vehicle part such as an electric window. The sensor arrangement includes a pair of opposing resilient walls which define a cavity, the walls moving toward each other when an obstruction is pinched between the movable vehicle part and the walls. A distance sensor, arranged in the cavity between the walls, engages an interior portion of one of the walls to actuate a response signal.

Claim 1 is illustrative of the invention and reads as follows:

1. A motor vehicle sensor arrangement for detecting an obstruction at a movable vehicle part which is movable along a path into an end position, comprising:

a pair of opposing walls spaced at a first distance in an undeformed position to define a cavity therebetween, said cavity being located proximate but outside of said path of the movable vehicle part, at least one of said walls being formed of a resilient material such that the walls move toward each other when said obstruction is pinched between said movable vehicle part and said walls; and

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a distance sensor arranged in said cavity and engageable with an interior portion of one of the walls to actuate a response signal when said walls move toward each other, said distance sensor and said interior portion being spaced at a second distance when in said undeformed position, said second distance being substantially less than said first distance.

The Examiner relies on the following prior art:

Kramer et al. (Kramer)	5,296,658	Mar. 22,
1994		

Claims 1, 5, and 6 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Kramer.¹

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs² and Answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal. The rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into

¹In response to the amendment after final rejection filed July 27, 1998, the Examiner withdrew the 35 U.S.C. § 112, second paragraph, rejection of claims 1-13.

²The Appeal Brief was filed December 30, 1998. In response to the Examiner's Answer dated March 16, 1999, a Reply Brief was filed May 17, 1999 which was acknowledged and entered by the Examiner on November 17, 1999.

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consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1, 5, and 6. Accordingly, we affirm.

Appellants have indicated (Brief, pages 4 and 5) that, for the purposes of this appeal, independent claim 1 stands or falls separately from claims 5 and 6 which are grouped together. We will consider the claims separately only to the extent that separate arguments are of record in this appeal. Dependent claim 6 has not been argued separately in the Brief and, accordingly, will stand or fall with its base claim 5. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden

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to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Arguments which Appellants could have made but elected not to make in the Briefs have not been considered in this decision (note 37 CFR § 1.192).

With respect to independent claim 1, the Examiner has addressed how the various limitations are suggested by Kramer. In particular, the Examiner has restated his original position expressed in the final rejection with regard to the claimed "distance sensor." The Examiner now asserts that it would have been obvious to the skilled artisan to consider the drain wires 30 and 31, arranged in cavity A+B, which actuate a signal when walls 26 and 28 come into contact with each other,

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as the claimed distance sensor.

After reviewing the Kramer reference, we agree with the Examiner's characterization of the drain wires 30, 31 as a "distance sensor" since the walls clearly move through a distance until they come into contact. We do consider, however, the Examiner's assertion of the obviousness of recognition to the skilled artisan of this fact to be misplaced. In our view, the Examiner's analysis of the language of appealed claim 1 and the operation of the drain wire "distance sensor" of Kramer establishes that all of the elements of claim 1 are in fact disclosed by Kramer. A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974).

Although Appellants filed a Reply Brief, no arguments were directed to the Examiner's restatement of the line of reasoning with respect to Kramer's disclosure of the claimed

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'distance sensor." Since the Examiner's prima facie case of obviousness has not been rebutted by any persuasive arguments from Appellants, the 35 U.S.C. § 103 rejection of independent claim 1 is sustained.

Turning to a consideration of dependent claim 5, the representative claim for Appellants' grouping of claims 5 and 6, we sustain the Examiner's 35 U.S.C. § 103 rejection of this claim as well. We agree with the Examiner that the indentations 24 which serve as the pivot points for the movement of wall 22 meet the claimed "supporting wedge" language of claim 5. Appellants' argument that a "wedge" requires a positive structure rather than a "void" such as the indentations of Kramer are unpersuasive and have no support on the record. Since all of the limitations of the claim are suggested by Kramer, the Examiner's 35 U.S.C. § 103 rejection of claim 5, and claim 6 which falls with claim 5, is sustained.³

In conclusion, we have sustained the Examiner's 35 U.S.C.

³We have not considered Appellants' separate argument for patentability of claim 6 in the Reply Brief. Appellants are bound by the original grouping of claims 5 and 6 in the Brief which the Examiner relied upon in the Answer.

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§ 103 rejection of all of the claims on appeal. Accordingly, the decision of the Examiner rejecting claims 1, 5, and 6 is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

	Errol A. Krass)	
	Administrative Patent Judge)	
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)	
	Jerry Smith)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	Joseph F. Ruggiero)	
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